

Amendments to the Drawings:

The attached sheet of drawings includes changes to Fig. 9a. This sheet, which includes Figs. 8 and 9a, replaces the original sheet including Figs. 8 and 9a. In Figure 9a, element 90 has been relabeled element 91 to avoid duplicative numbering.

Attachment: Replacement Sheet
 Annotated Sheet Showing Changes

REMARKS

Claims 1-23 were previously pending, of which claims 13-20 have been withdrawn, claims 2-3 have been cancelled, claims 1, 4, 8, 9, 21, and 23 have been amended, and claims 24-27 have been added. Reconsideration of presently pending claims 1, 4-12, and 21-27 is respectfully requested in light of the above amendments and the following remarks.

Double Patenting Rejection

Claims 1, 11, 12, 21, and 23 stand provisionally rejected under 35 U.S.C. §101 as claiming the same subject matter as certain claims of copending Application No. 10/799835. Claim 1, as amended, recites “a first anchoring device movably attached to the first distraction arm and configured to receive a fastener engaged with the first vertebra.” Claim 21 recites, “the first distracting arm comprises a first pivot pin and further wherein the first pivot mechanism pivotally engages the first pivot pin.” For at least these reasons, claims 1 and 21 and the claims which depend from them are not coextensive in scope with the claims of the copending application.

Specification Objection

The specification has been amended to correct the brief description of Fig. 7.

Rejections under 35 U.S.C. §112

Claim 21 stands rejected under 35 U.S.C. §112 as lacking insufficient antecedent basis for “the first vertebral body” and “the second vertebral body.” The Applicant respectfully requests reconsideration of this rejection as the preamble properly introduces both of these terms. The remaining §112 rejections have been corrected by amendment.

Rejections under 35 U.S.C. §102

Claims 1-6, 10, and 21 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Pat. App. Pub. No. 2005/0021040 to Bertagnoli (“the Bertagnoli application”).

Claim 1 as amended recites, inter alia, “a first anchoring device movably attached to the first distraction arm and configured to receive a fastener engaged with the first vertebra; . . . wherein the first anchoring device is adapted for pivotal movement in a sagittal plane and said movement is independent of the second anchoring device.” These limitations are not taught by the Bertagnoli application.

Claim 21 as amended recites, inter alia, “a first anchoring device coupled between the first distracting arm and the first vertebral body, wherein the first anchoring device comprises a nonthreaded first pivot mechanism and the first distracting arm comprises a first pivot pin and further wherein the first pivot mechanism pivotally engages the first pivot pin to permit motion in a sagittal plane.” These limitations are not taught by the Bertagnoli application.

Drawings

FIG. 9a has been amended to correct the numbering for element 91.

New Claims

Claims 24-27 have been added. Independent claim 24 recites, inter alia, “a first distracting arm including a side wall through which an elongated slot extends [and] an anchoring device adapted to receive a bone fastener and including a connecting projection adapted for pivotal motion within the elongated slot and through the side wall.” These limitations are not taught by the Bertagnoli application.

Conclusion

It is clear from all of the foregoing that claims 1, 4-12, and 21-27 are in condition for allowance. The Examiner is invited to phone the Applicant's representative at number listed below to resolve any open issues which the Examiner has identified.

An early formal notice of allowance of claims 1, 4-12, and 21-27 is requested.

Respectfully submitted,



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